

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	WC Docket No. 05-068
Regulation of Prepaid Calling Card Services)	

COMMENTS OF IDT TELECOM, INC.

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SUMMARY

In the increasingly competitive calling card industry, calling card providers are developing a wide range of new features and capabilities to offer consumers in addition to the traditional use of such cards to place telephone calls. The increased capabilities and uses of these new cards make them more attractive to consumers than the individual features sold separately. These enhanced calling cards are and should be classified as information services rather than telecommunications services.

In particular, calling cards that provide customers access to information content (*e.g.*, sports scores, weather reports, stock quotes or news) selected by the customer, rather than merely inserted in the call, clearly meet the statutory definition of an information service. For example, with this type of card, a customer would have the option of accessing up-to-date news or other information or placing a telephone call, or any combination of the two on any given call. This type of calling card provides the user additional information and involves interaction with stored information, and is therefore an information service.

The key fact controlling regulatory classification of calling cards providing access to information is that these services are an integral element of the calling card product and are available to every card user every time they use the card. Customers who buy a card offering these features are plainly receiving additional and different services from those who buy a card offering only the ability to place long-distance calls. It is not relevant whether the information is offered in conjunction with an underlying telecommunications service.

Also, neither the reasons for which a customer purchases a calling card nor the frequency with which the customer uses a particular service should be relevant to whether the calling card is an information service. If the calling card offers the capability to access information on each call, it satisfies the statutory definition of an information service on its face. Moreover, any rule

that made the classification of a service depend on the user's purpose, or on the frequency of use of particular capabilities, would be impossible to administer and enforce.

Even if a calling card does not provide information content, it may still be an information service. For example, the service provider may perform a net protocol conversion on the information it is processing, or offer a capability to store the telecommunications portion of the call for forwarding or later retrieval, or record a voice message on busy/no answer calls for later delivery. These applications would fall within the Commission's well-established definition of enhanced services.

Under Commission precedent, so called "hybrid" services that consist of a telecommunications and an information component, "are information services not telecommunications services." A calling card that provides the ability to access stored information or place a telephone call is a single enhanced product that gives users greater value and flexibility than the individual services provided separately. This combined product is an information service.

If the Commission were to abandon its established treatment of hybrid services, or force an artificial separation of the service into two parts (a telecommunications service and an information service), it would artificially restrict the marketplace development of these competitive calling card products and significantly reduce the value of these products to consumers. Regulatory policies should not be applied to prevent the development of innovative services, but rather should encourage such innovation.

Even if the Commission were to consider a long-distance call placed from a hybrid information services platform to be a "telecommunications service," it would be impossible for card providers to contribute to universal service based upon revenues from such calls, because the price of an enhanced calling card is not allocated between information and telecommunica-

tions capabilities. A calling card provider has no way of computing the gross revenue attributable to a hypothetical telecommunications service. Further, the Commission should recognize that customers who use enhanced calling cards to place long-distance calls should contribute indirectly to USF under current rules, because their calls will be completed over the facilities of telecommunications carriers who do contribute to USF.

For similar reasons, calling cards that qualify as enhanced services are exempt from access charges under the Commission's long-established rules. Any change in this practice would be unwise and contrary to the public interest. Calling card providers would not be able to obtain access to local exchange networks separately for different components of the service, without impairing the functionality of the service (*i.e.*, making the user call different numbers for different uses of the card, which would make the offering impractical).

Because prepaid cards are widely used by persons of lower socio-economic status, including many immigrants, the easy availability of prepaid card services offering information over the telephone can help to bridge the "digital divide" that might otherwise exclude these users from the benefits of the Information Age. The Commission should avoid placing any unnecessary obstacles in the way of rolling out these services, or piling any excessive costs on them.

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COMMENTS OF IDT TELECOM, INC.

IDT Telecom, Inc. ("IDT"), through its undersigned counsel, hereby submits its comments in response to the Notice of Proposed Rulemaking ("NPRM") in the above-captioned docket, released on February 23, 2005.¹

INTRODUCTION

IDT is a leading U.S.-based provider of wholesale and retail telecommunications services worldwide, using its leased fiber optic network and infrastructure to route calls worldwide. IDT provides domestic and international long distance services, prepaid calling cards and Voice over Internet Protocol ("VoIP") services to consumers throughout the United States. IDT's telecommunications operations are international in scope. IDT is continually expanding its worldwide telecommunications presence, employing 3,800 people, with offices in more than 17 countries on five continents.

IDT is encouraged by the Commission's decision to evaluate whether the new generation of calling card products that provide consumers much more than the ability to place a telephone call may be classified as information services and thus be exempt from the regulatory regime applicable to more traditional telecommunications services. Calling cards, once thought only to

¹ *AT&T Corp. Petition for Declaratory Ruling Regarding Enhanced Prepaid Calling Card Services; Regulation of Prepaid Calling Card Services*, Order and Notice of Proposed Rulemaking, WC Docket Nos. 03-133 and 05-68, FCC 05-41 (rel. Feb. 23, 2005) ("NPRM").

provide consumers the ability to place long-distance calls, now may be used to offer a wide array of additional features and capabilities to consumers. These new calling cards are the natural evolution of traditional calling cards created by providers' ongoing efforts to provide unique, innovative services to consumers in order to attract and retain customers in the highly competitive calling card market. These new products offer consumers a combination of valuable features that increase the capabilities and uses of the cards and thus make them more attractive to consumers than the individual features sold separately. As discussed below, the additional capabilities included in these new calling cards allow users to access various information services in addition to the ability to place telephone calls. Consequently, these enhanced calling cards are and should continue to be classified as information services rather than telecommunications services.

COMMENTS

I. CALLING CARDS THAT PROVIDE A CUSTOMER THE CAPABILITY TO ACCESS INFORMATION CONTENT ARE ENHANCED SERVICES.

In its Petition initiating the proceeding in Docket No. 03-133, AT&T explained that, during call set-up, its calling card service plays an advertisement from the retailer that sold the calling card ("Retailer Ad Card"). *NPRM*, at ¶ 6. AT&T later amended its petition to request a Commission ruling on two new "variants" of its calling card service. In the first variant, the customer is given the option to listen to additional information about the retailer or access other information, such as adding minutes to the card ("Info Menu Card").² In the second variant, AT&T would provide transport associated with the calling card over AT&T's Internet backbone ("IP Variant").³ In the Order accompanying the *NPRM*, the Commission found that the Retailer

² *NPRM*, at ¶¶ 11, 38; AT&T Nov. 22, 2004 Letter at 3-4.

³ *NPRM*, at ¶¶ 12, 38; AT&T Nov. 22, 2004 Letter at 3-4.

Ad Card does not meet the statutory definition of an information service because: (1) AT&T does not offer any capability to the customer with respect to the advertising message; and (2) the advertising message is incidental to the underlying telecommunications service. In the NPRM, the FCC seeks comment on how to apply this analysis to AT&T's Info Menu Card.⁴

In addition, the Commission requested comments on how to distinguish between telecommunications and information services for other existing or potential prepaid calling card services that incorporate features not specifically addressed in the order and what other features are relevant to the classification of existing or potential prepaid calling cards. The Commission asked whether calling cards exist that offer capabilities in addition to the ability to place a call, what those capabilities are, and how they differ from the prepaid calling cards offered or proposed by AT&T.

As explained below, IDT believes that AT&T's Info Menu Card is an enhanced service, because it offers callers the capability to access stored information that is not merely incidental to the use of the card to place telephone calls. The Commission should note, however, that the range of potential calling card services goes far beyond the Info Menu Card or the IP Variant. Calling card providers are already offering calling cards that incorporate features and capabilities beyond the mere insertion of an advertisement. With these calling cards, there is no distinction between the telecommunications and information service components of the products offered.

The relevant standards for the Commission to apply in this proceeding are contained in the Communications Act of 1934 (the "Act"), and in the Commission's rules interpreting the Act. Section 3(20) of the Act, 47 U.S.C. § 153(20), states that an "information service" is the "offering of a capability for generating, acquiring, storing, transforming, processing, retrieving,

⁴ *NPRM*, at ¶ 39.

utilizing, or making available information via telecommunications.” The Commission’s rules further provide that any service “which employ[s] computer processing applications that act on the format, content, code, protocol or similar aspects of the subscriber’s transmitted information, provide the subscriber additional, different or restructured information ... or involve subscriber interaction with stored information,” 47 C.F.R. § 64.702(a), is an “enhanced service,” and therefore, an “information” service.

A. The Ability to Access and Interact with Stored Information is a Characteristic of Enhanced Services.

Cards that provide customers access to information selected by the customer, rather than merely inserted in the call, clearly meet the statutory definition of an information service.

AT&T’s Info Menu Card falls within this category. As described, this product presents callers with a menu of options, and at least some of these options clearly allow the customer to receive stored information (“press 1 to learn more about specials at ABC stores”). This aspect of the product is very similar to a “Talking Yellow Pages” service, which the Commission has already found to be an information service.⁵ Further, the Info Menu Card product clearly differs from the Retailer Ad Card. The Retailer Ad Card required all callers to listen to an advertisement as a condition of placing a telephone call, *NPRM*, at ¶ 16; by contrast, the Info Menu Card offers information at the customer’s option as an enhancement to the basic calling capability.

In finding the Retailer Ad Card to be a telecommunications service, the FCC distinguished that service from the Talking Yellow Pages information service considered in *Northwestern Bell Telephone Company*. *NPRM*, at ¶ 17. Specifically, the FCC noted that, unlike the Retailer Ad Card, the information service in *Northwestern* “played advertisements in response to

⁵ See *Northwestern Bell Telephone Company Petition for Declaratory Ruling*, Memorandum Opinion and Order, 2 FCC Rcd. 5986 (1987).

the subscribers' individual selections for various categories of information (*e.g.*, restaurants, stores, services).” *Id.* Therefore, the FCC concluded the Talking Yellow Pages service “involves ‘subscriber interaction with stored information.’” *Id.* The Info Menu Card, with its menu of information options, plainly resembles the Talking Yellow Pages service more than it does the Retailer Ad Card. The customer does not have to listen to the recorded information to place a telephone call, nor do they have to place a telephone call in order to access the information content.

In addition, the Commission should be aware that current technology can and does offer prepaid card users access to a much wider range of information than just advertising. Some calling card services can now offer access to news and other premium information content. Utilizing this type of card, a customer who calls the provider’s Interactive Voice Response (“IVR”) platform would have the option of (1) accessing news or other information, or (2) placing a telephone call with the same card. The card user would be able to choose either option or any combination of both on any given call, and go back and forth from one to the other. For example, a service of this type could enable the user to access up-to-date weather, traffic, news or sports or other information *at the user’s request*. This is in direct contrast to the recorded advertisement that the FCC found did not offer any capability to the customer, and was merely incidental to the underlying telecommunications service. Moreover, the service could be tailored to provide specific local or regional information based upon the user’s location. In short, the potential applications of such services greatly exceed mere advertising.

Calling card services are constantly evolving as calling card providers develop innovative features and products for consumers in order to remain competitive. As a result, the information services currently provided may be expanded and new services may be added. For example,

providers could offer the caller an opportunity to purchase products after playing an audio description. Callers could also have the opportunity to access information in the midst of a telephone call, so that both parties to the call could listen to the enhanced content. In such an environment, a narrow regulatory classification that would require calling card providers to identify before a new feature is launched whether it is an information service or a telecommunications service or seek Commission evaluation of each new service would stifle competitiveness and innovation. Indeed, as the *NPRM* demonstrates, the potential consequences of a misclassification by a calling card provider could be costly. Such restrictions would limit the benefits that competition brings to consumers.

B. The Information Service Provided by These Calling Cards is an Integral Component of the Calling Card Service and is Presented to Consumers as an Enhanced Service.

The FCC requested comment on whether offering the caller a menu of options to access information satisfies the definition of an information service or whether the information made available must be more integral to the underlying telecommunications service. *NPRM*, at ¶ 39. IDT respectfully submits that the issue is whether the ability to interact with stored content is integral to *the value received by the customer* from purchase of the card service, not whether it is integral to some underlying telecommunications service.⁶ A calling card that offers users the option of accessing news, sports, weather, stock quotes or other information clearly satisfies the definition of an information service,⁷ regardless of whether this information is or is not offered in

⁶ See *Federal-State Joint Board on Universal Service*, Report to Congress, 133 FCC Rcd. 11501, at ¶ 105 (1998).

⁷ See *Northwestern Bell Telephone Company Petition for Declaratory Ruling*, Memorandum Opinion and Order, 2 FCC Rcd. 5986, at ¶ 20 (1987) (“a subscriber to Talking Yellow Pages makes a phone call and hears a recorded advertisement. Thus, Talking Yellow Pages involves ‘subscriber interaction with stored information,’ and thus falls squarely within the definition of ‘enhanced service’ in Section 64.702(a) of the Commission’s rules.”); Amendment

conjunction with an underlying telecommunications service. The key fact is that they are an integral element of the calling card product and are presented to the customer as such.⁸ The information services provided with these calling cards add value to the calling card by providing additional functionality, capabilities and features, independent of the ability to use the card to make long-distance calls, and therefore increase the value of the card to consumers.⁹

The FCC also requested comment on how it should distinguish between incidental information and information that is essential to the service and whether there is any evidence that calling cards are being marketed as providing a service other than making telephone calls. *NPRM*, ¶ 39. The independently accessed and available information services described above are not incidental to the underlying telecommunications service. When a caller using one of these enhanced calling cards reaches the IVR platform, the caller must affirmatively select to either

of Section 64.702 of the Commission's Rules and Regulations, Memorandum Opinion and Order, 84 F.C.C.2d 50, 54-55 (1980) (finding interactive voice response services that allow subscribers to obtain access to voice information (including news, weather, and sports) and voice mail messaging services are enhanced services); *North American Telecommunications Association*, 101 F.C.C. 2d 349, 359-361, ¶¶ 23-28, 41 (1985) (finding customer dialed account recording, which allows the customers to use the telephone company's electronic switches for the storage and retrieval of customer business information to be an enhanced service). The Commission has determined that enhanced/information services include, among other things, such services as voice mail, electronic mail, facsimile store-and-forward, interactive voice response, protocol processing, gateway, and audiotext information services. *See Implementation of Sections 255 and 251(a)(2) of the Communications Act of 1934, as Enacted by the Telecommunications Act of 1996; Access to Telecommunications Service, Telecommunications Equipment and Customer Premises Equipment by Persons with Disabilities*, Report and Order and Further Notice of Inquiry, WT Docket No. 96-198, 16 FCC Rcd 6417, at ¶ 77 n.180 (1999).

⁸ *See AT&T 900 Dial-It Services and Third Party Billing and Collection Services*, File No. ENF-88-05, Memorandum Opinion and Order, 4 FCC Rcd. 3429, 3431, at ¶ 20 (CCB 1989) (service is an enhanced service if the information provided is "not incidental" to the basic telecommunications service, but rather is "the essential service provided").

⁹ *See Federal-State Joint Board on Universal Service*, Report to Congress, 133 FCC Rcd. 11501, at ¶ 105 (1998) ("Internet service providers provide their customers with value-added functionality by means of computer processing and interaction with stored data.")

access a particular information service or place a telephone call; neither operation happens automatically. Thus, the customer is aware during each and every use of the card of the availability of the information options. Customers who buy a card offering these features are plainly receiving additional and different services from those who buy a card offering only the ability to place long-distance calls. This type of product differentiation is a natural feature of competitive markets, and is one way that sellers can seek to make their products more attractive to customers.

Customers also become aware of the enhanced capabilities of calling cards through marketing. For example, a calling card provider who offers access to news and other information highlights those additional features in its marketing materials and advertisements. The provider may seek to distinguish this card from competing products that merely enable the purchaser to place telephone calls. In the increasingly competitive, margin-driven calling card market, an added feature that makes one provider's calling card more valuable to consumers than another's could mean the difference between running at a loss and turning a profit. For this reason alone, calling card providers that offer enhanced services with their calling cards have a strong incentive to market those additional features.

Accordingly, where access to information is available at the user's option, as opposed to being delivered automatically as a condition of placing a telephone call, this information service is an inherent component of the value stored in the calling card product. When a user purchases a calling card marketed as providing both news and other information and the ability to place telephone calls, the user is well aware that he has purchased a single calling card product that provides him an array of uses and varied functionality that might otherwise only be available in separate products. In fact, the calling card product may have a greater perceived value to con-

sumers (because of the convenience of accessing both components with a single call) than the two services sold separately.

C. The Purpose for Which a Customer Purchases a Calling Card and the Frequency with Which a Customer Utilizes an Enhanced Service of the Card are Not Relevant to Whether the Calling Card Offers an Information Service.

The FCC also requested comment on whether the customer's purpose in buying the card and how frequently the customer uses any additional features is relevant to the determination of whether the service is an information service. *NPRM*, ¶ 39. Neither the reasons for which a customer purchases a calling card nor the frequency with which a customer utilizes a particular service should be relevant to whether the calling card service is an information service. The Commission's rules do not require that users interact with stored information a certain number of times or at a specific frequency for the service to be classified as an information service. All that is necessary is that a calling card provider offer users a capability to access and interact with stored information and that customers purchase that service.

If a calling card offers a user the capability to access an information service on each call, it satisfies the statutory definition of an information service on its face. *See* 47 U.S.C. § 153(20) (“*offering of a capability* for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications”) (emphasis added). This result is consistent with the Commission's finding in the *NPRM* that classification of AT&T's Retailer Ad Card turned, in part, on whether AT&T was “offering” any “capability” other than the capability to place a telephone call. *See NPRM*, at ¶ 15.

Moreover, any rule that made the classification of a service depend on the user's purpose, or on the frequency of use of particular capabilities, would be impossible to administer and enforce. In most cases, the provider will not be able to know either at the time a customer

purchases the card or at the time the customer calls the provider's platform whether the customer intends to access the information or place a telephone call or both. In fact, where a calling card product is marketed as providing multiple types of services, some customers might purchase these calling cards only intending to use one functionality, and others would intend to use multiple functions, but there would be no way for the card provider to know which customer is which, or to allocate or divide its revenues at the time of sale. Some customers might purchase a card intending only to use one capability, and then decide later to use another. All of these considerations would make it practically impossible for any provider to determine the appropriate classification of its services if either intent or frequency of use were relevant factors.

II. PROTOCOL PROCESSING OR STORAGE AND FORWARDING OF THE TELECOMMUNICATIONS PORTION OF AN INTEGRATED SERVICE WOULD MAKE THIS COMPONENT OF THE SERVICE AN INFORMATION SERVICE.

The FCC also requested comments on the extent to which the use of IP technology to deliver calls placed using prepaid calling cards is a relevant factor in determining its classification under the Act. *NPRM*, at ¶ 40.

The use of IP technology may indeed be relevant to the classification of a particular calling card service as an information service, if the service provider performs a net protocol conversion on the information it is processing. For example, a non-facilities-based calling card provider may convert the telecommunications portion of the call to a different format, such as IP, to hand the call off to a third-party carrier for delivery to the called party. Similarly, a calling card provider may receive a call to its calling card platform in IP format and convert the information to TDM to hand it off to a third-party carrier for delivery to the called party. In these examples, the calling card provider would deliver the information in a different form, *e.g.*, an IP packet stream, than it was originally received, and the terminating carrier would convert the IP packet

stream to TDM or another format for delivery to the called party. Thus, the calling card provider would be providing a net protocol conversion.¹⁰

A different form of information service, which may or may not involve the use of IP technology, is a capability for generating, storing, or retrieving stored information. *See* 47 U.S.C. § 153(20). For example, a calling card provider may store or record the telecommunications portion of the call for forwarding or later retrieval, or record a voice message on busy/no answer calls for later delivery. Applications such as these, rather than providing new content to the user, would “act on the format, content, code, protocol or similar aspects of the subscriber’s transmitted information” and are therefore enhanced or information services. 47 C.F.R. § 64.702(a). *See also Non-Accounting Safeguards Order*, 11 FCC Rcd 21,905, at ¶ 102 (1996) (statutory category of information service is broader than enhanced services, but includes everything previously deemed to be enhanced services). For example, the Commission has long recognized that voice mail is an enhanced service, because the providers allow storage and retrieval of voice messages by callers, even though the provider itself does not generate any information content.¹¹ Calling cards that provide similar storage and retrieval capabilities should similarly be classified as enhanced services.

III. A CALLING CARD SERVICE OFFERING BOTH AN INFORMATION SERVICE COMPONENT AND A TELECOMMUNICATIONS SERVICE COMPONENT SHOULD BE DEEMED AN INFORMATION SERVICE.

As noted above, some calling cards offer customers a choice, for a single prepaid price, of using the card either to access information services or to place telephone calls, or both. The

¹⁰ *Independent Data Comm. Mfrs. Ass’n*, 10 FCC Rcd 13717, ¶¶ 11-12 (1995) (a net conversion between incompatible protocols is an enhanced service).

¹¹ *Amendment of Section 64.702 of the Commission’s Rules and Regulations*, Memorandum Opinion and Order, 84 F.C.C.2d 50, at ¶ 12 (1980).

information component of the card may include access to content, storage or retrieval of voice messages, or net protocol conversions, for example. Users will not necessarily access or benefit from all of these capabilities on every call, but they are always available. In competitive markets, sellers constantly seek to innovate and make their products more attractive to users, and one of the ways of doing this is by combining various capabilities in a single, easy-to-use prepaid card, which may be more convenient and useful to some customers than either of the component services if offered separately. The Commission's existing rules anticipate these kinds of combined offering, and require that they be treated as information services.

The Commission has stated that services that consist of a telecommunications and an information service component, so called hybrid services, "are information services not telecommunications services."¹² However, the Commission has cautioned that simply "combining an enhanced service with a basic service for a single price" does not necessarily constitute a single enhanced offering. "The issue is whether, functionally, the consumer is receiving two separate and distinct services."¹³ Unlike the examples previously cited by the Commission as providing two separate and distinct services, such as a reseller offering basic voice-grade telephone service with Internet service for a single monthly fee, calling card services that provide users the ability to access stored information or place a telephone call provide a single enhanced product that

¹² *Federal-State Joint Board on Universal Service*, Report to Congress, 13 FCC Rcd. 11501, at ¶ 57 (1998) (citing *Computer II*, 77 F.C.C.2d at 420-28).

¹³ *Federal-State Joint Board on Universal Service; Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charge*, Fourth Order on Reconsideration, 13 FCC Rcd 5318, ¶ 282 (1997). In a footnote, the FCC offered the following example: "if a reseller offers basic voice-grade telephone service with Internet service for one flat monthly fee, the fact that the reseller provides an enhanced service with a basic service for a single price does not render the basic voice service an enhanced service. In that instance, the enhanced service is not combined with the basic service into a single enhanced offering because, functionally, the consumer is receiving two separate and distinct services, voice-grade telephone service and Internet service." *Id.*, n.827.

gives a single user access to information or telecommunications, or any combination of both, during a single session. This combined product is an information service.¹⁴

In the example discussed above, the calling card service provides customers the ability to access information services or place a telephone call (*i.e.*, access a telecommunications service). In fact, customers may use multiple components of the service on a single call. For example, a customer may use the card to check on the traffic to the airport, access sports information to find out the score of the local game, check the weather in the city the customer is traveling to that evening, and then call someone in the destination city to confirm flight schedules; or, for that matter, call a friend or business contact first and then return to the information menu to search for a restaurant for dinner with that person.

If the Commission were to abandon its established treatment of hybrid services, it would restrict the development of competitive calling card products. Providers wishing to offer enhanced services, and to take advantage of the regulatory benefits of those services, would be forced to offer a separate product for that purpose. Customers wanting to use both capabilities would then have to purchase two different cards and dial two different access numbers to access two separate and distinct services. This would stifle competition and prevent the public from receiving the benefits of new services. A combined service has greater value to consumers than two separate services because of the ability to both access news and other information and place a telephone call with a single card and a single call to the IVR platform. Forcing an artificial separation of this service into two parts would significantly reduce the value of these products to

¹⁴ See *Federal-State Joint Board on Universal Service*, Report to Congress, 13 FCC Rcd. 11501, 11520 at ¶ 39 (“when an entity offers transmission incorporating the ‘capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing or making available information,’ ... it offers an ‘information service’ even though it uses telecommunications to do so”).

consumers. Regulatory policies should not be applied to prevent the development of innovative services, which would be the case if the Commission treated these valuable, combined products as a separate information service and telecommunications service.

IV. ENHANCED CALLING CARD SERVICES SHOULD NOT BE SUBJECT TO USF CONTRIBUTIONS OR ACCESS CHARGES.

A. Only Telecommunications Providers are Subject to Universal Service Fund Contribution Obligations

A company's USF obligations are largely driven by whether the company is offering a telecommunications service or an information service. With a few exceptions, only a company's interstate and international telecommunications service revenue is subject to USF contribution. Enhanced and information service providers are not required to contribute to USF to the extent they provide enhanced and/or information services.¹⁵ Therefore, revenues from any calling card that constitutes an information service, as discussed in the preceding sections, should be exempt from USF contributions.

Even if the Commission (contrary to the precedent cited above) were to consider a long-distance call placed from a hybrid information services platform to be a "telecommunications service," it would be impossible for card providers to contribute to universal service based upon revenues from such calls, because the price of an enhanced calling card is not allocated between information and telecommunications capabilities. When a card is sold, the provider has no way of knowing how often the purchaser will use it for placing telephone calls, and how often for accessing information. It therefore has no way of computing the gross revenue attributable to a hypothetical telecommunications service.

¹⁵ *Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd. 8776, at 788 (1997).

Further, the Commission should recognize that customers who use enhanced calling cards to place long-distance calls should contribute indirectly to USF under current rules. For example, when a non-facilities-based calling card provider sends outbound calls from its IVR platform to a domestic or international destination, it either carries the calls over dedicated facilities it leases from another carrier, or hands the calls off to a facilities-based carrier who bills the calling card provider for the termination. In either case, the calling card provider would be purchasing a telecommunications service from the underlying carrier, and that carrier in turn generally would be obligated to contribute to USF.¹⁶ Therefore, treating the hybrid card as an information service should not cause a significant loss in USF contributions.

B. The “Enhanced Service Exemption” from Access Charges Applies to Calling Cards Offering Information Services.

The Commission’s rules require payment of interstate access charges by “*interexchange carriers* that use local exchange switching facilities for the provision of interstate or foreign telecommunications services.”¹⁷ The Commission established more than 20 years ago that, for purposes of this requirement, “interexchange carriers” refers only to entities that are regulated as common carriers under Title II of the Communications Act.¹⁸ In particular, the Commission has confirmed that this term does not include entities to the extent they are providing enhanced or

¹⁶ If the calling card provider were treated as offering a telecommunications service, it would have to contribute to USF based on its gross revenues. However, the amounts paid by the calling card provider to its underlying carrier would become exempt wholesale revenues, not subject to contribution. Thus, the increase in contributions from calling card providers would be offset by a decrease in contributions from their underlying carriers.

¹⁷ 47 CFR § 69.5(b) (emphasis supplied).

¹⁸ *MTS and WATS Market Structure*, 97 FCC 2d 682, 711-22 (1983), *aff’d in principal part and remanded in part*, *National Ass’n of Regulatory Util. Comm’rs v. FCC*, 737 F.2d 1095 (D.C. Cir. 1984).

information services (including those hybrid services that qualify as enhanced or information services).¹⁹

Since creating the enhanced service provider exemption in 1983, the Commission has twice re-examined the application of access charges to non-carrier users and both times has reaffirmed its policy of limiting access charges to common carriers. In 1988, the Commission specifically considered the treatment of enhanced service providers under its rules, and determined that it would be premature to make any changes in the status of these entities.²⁰ Nearly a decade later, the Commission again found that enhanced service providers, now referred to as “Information Service Providers” or ISPs, and other non-carriers should remain outside the access charge regime.²¹ Since this determination in 1997, the Commission has taken no action to change its policy regarding the applicability of access charges to enhanced service/information service providers, and it should not do so now where a calling card service is classified as an information service.

¹⁹ The FCC has expressly confirmed that “the exemption from access charges for enhanced services applies to ... any entity that actually provides enhanced services ..., regardless of any other services that entity might provide.” *WATS Related and Other Amendments of Part 69 of the Commission's Rules*, 64 RR 2d 503, 3 FCC Rcd 496, para. 10 (1988). That is, the same company may be an interexchange carrier with respect to some services, and an enhanced service provider with respect to others.

²⁰ *Amendments of Part 69 of the Commission's Rules Relating to Enhanced Service Providers*, CC Docket 87-215, 3 FCC Rcd. 2631, 2633 (1988) (noting that the enhanced services industry remains in a state of change and uncertainty “given the combined effects of the impending [Open Network Architecture] implementation and the entry of the [Bell Operating Companies] into certain aspects of information service,” including transmission of information as part of a gateway to an information service and voice storage and retrieval services, and that elimination of the access charges exemption at such a time “could cause such disruption in this industry segment that provision of enhanced services to the public might be impaired.”).

²¹ *Access Charge Reform*, First Report and Order, 12 FCC Rcd. 15982 (1997), *aff'd*, *Southwestern Bell Tel. Co. v. FCC*, 153 F.3d 523 (8th Cir. 1998).

In particular, even if some component of the service were deemed to be a telecommunications service for some purposes, the service should still be considered “enhanced” for purposes of the access charge rules. Any other result would prevent the calling card provider from using local business lines for originating a hybrid service, since at least some of the time the caller will use the card to place a long-distance call. The calling card provider, however, cannot know which calls are which until after the connection to its IVR platform has already been established. Therefore, the provider would either have to pay access charges on all calls, including those using pure information services (which would frustrate the Commission’s intent in exempting these services from implicit non-cost-based subsidies), or require the customer call different numbers for different uses of the card, which would make the offering impractical.

V. BECAUSE CALLING CARDS THAT PROVIDE ACCESS TO INFORMATION, AS WELL AS THE ABILITY TO PLACE A TELEPHONE CALL, ARE AN INFORMATION SERVICE, THERE IS NO NEED TO TREAT SUCH CARDS DIFFERENTLY IF THEY ARE SOLD TO MILITARY PERSONNEL.

The FCC requested comment on whether there are circumstances in which soldiers and their families would be negatively impacted if prepaid calling cards were subject to universal service and access charges and what steps the FCC could take to ensure the availability of calling card services at reasonable rates. *NPRM*, ¶ 43.

Members of the armed forces are a perfect example of the type of customer that would purchase a calling card for reasons other than placing telephone calls. A calling card that can be used to access news, sports or other information may be invaluable to a member of the armed forces serving abroad. Certainly soldiers could purchase, or receive from their families, calling cards to call home; however, they could also use the cards to follow their favorite baseball team while off duty. Having a calling card with the capability to do both would be of greater value in these circumstances. Because, as explained above, this type of calling card should be exempt

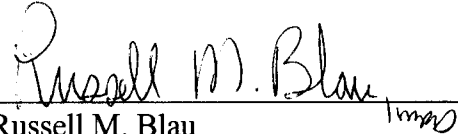
from USF contribution and access charge obligations, the Commission's regulatory policies will be consistent with the goal of making these services available to members of the military without adding unnecessary expense.

The Commission should not limit its public interest analysis to the interests of military families, however. Many other types of consumers can benefit from the availability of prepaid cards with enhanced features. As the Commission likely knows, prepaid cards are widely used by persons of lower socio-economic status, including many immigrants. Because of economic and language barriers, these consumers often do not have the same access to the Internet and to other sources of information as their more affluent counterparts. The easy availability of prepaid card services offering information over the telephone, with menus available in several languages, can help to bridge the "digital divide" that might otherwise exclude these users from the benefits of the Information Age. The Commission should avoid placing any unnecessary obstacles in the way of rolling out these services, or piling any excessive costs on them.

CONCLUSION

For the foregoing reasons, IDT submits that calling card providers that offer users the ability to access information content, that provide a net protocol conversion, or that include a capability to store or retrieve information of the user's choice in addition to the ability to place a telephone call should be considered to be providing an information service and those services should be exempt from both access charges and USF contributions.

Respectfully submitted,

A handwritten signature in cursive script, reading "Russell M. Blau". The signature is written in dark ink and is positioned above a horizontal line.

Russell M. Blau

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